

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

327V0455

HOUSE TRANSPORTATION ENGROSSED NO. **HB 1194** - 02/20/2014

Introduced by: Representatives Hoffman, Cronin, Hunhoff (Bernie), Novstrup (David), Parsley, and Verchio and Senators Brown, Frerichs, Holien, and Lederman

1 FOR AN ACT ENTITLED, An Act to establish certain requirements relating to the crossings
2 of railroad rights-of-way by utilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any utility that intends to place a line across a railroad right of way shall request
5 prior permission for such placement from the railroad. The request shall be in the form of a
6 completed crossing application, including engineering specifications and location of the
7 crossing. The utility shall submit the crossing application on a form provided or approved by
8 the railroad, if available. The crossing application shall be sent to the railroad by certified mail,
9 return receipt requested.

10 Section 2. Beginning thirty days after the utility has submitted the completed crossing
11 application, paid the fee required in section 3 of this Act, and provided a certificate of insurance
12 confirming existence of general liability insurance with limits of two million dollars per
13 occurrence and an aggregate of four million dollars covering construction activities of the
14 affected utility, the utility may commence the construction of the crossing activity, unless there



1 is an objection by the railroad that the information contained in the crossing application is
2 incomplete or inadequate or an objection that special circumstances exist. For purposes of this
3 Act, special circumstances include the railroad crossing's relationship to other property, location
4 of the crossing in urban or other developed areas, the existence of unique topography or natural
5 resources, or other dangers inherent in the particular crossing.

6 Section 3. Unless otherwise agreed by the parties, a utility that crosses a railroad
7 right-of-way, other than a crossing within the public roads of the state, shall pay the railroad a
8 one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard
9 crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or
10 charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of
11 the crossing.

12 Section 4. If a railroad objects to the adequacy of the information contained in the crossing
13 application or asserts that special circumstances exist, the railroad shall provide notice of the
14 objection and the specific basis of the objection to the utility by certified mail, return receipt
15 requested. If the parties are unable to resolve the objection, either party may petition the Public
16 Utilities Commission for additional requirements or for modification of the standard crossing
17 fee within sixty days from receipt of the objection. Before filing a petition, the parties shall
18 confer in good faith in an attempt to resolve the objection. If a petition is filed, the Public
19 Utilities Commission shall determine, after notice and opportunity for hearing, whether special
20 circumstances exist that necessitate additional requirements for the placement or modification
21 of the standard crossing fee within one hundred twenty days of filing of the petition. The order
22 may be appealed pursuant to chapter 1-26. The Public Utilities Commission shall assess the
23 costs associated with a petition equitably against the parties.

24 Section 5. Nothing in this Act prevents a railroad and a utility from continuing under an

1 existing agreement or otherwise negotiating the terms and conditions applicable to a crossing
2 or the resolution of any disputes relating to the crossing. Nothing in this Act impairs the
3 authority of a utility to secure crossing rights by easement pursuant to the exercise of the power
4 of eminent domain.

5 Section 6. This Act applies to:

- 6 (1) Any crossing in existence before the effective date of this Act if an agreement
7 concerning the crossing has expired or is terminated. In such instance, if the
8 collective amount of seven hundred fifty dollars has been paid to the railroad during
9 the existence of the crossing, no additional fee is required; and
- 10 (2) Any crossing commenced on or after the effective date of this Act.

11 Section 7. Terms used in this Act mean:

- 12 (1) "Railroad," a railroad or any other entity responsible for the management of crossings
13 or collection of fees for the railroad;
- 14 (2) "Rural water system," an entity engaged in the treatment, distribution, and sale of
15 water to rural consumers that was created by chapters 34A-5, 46A-3A, or 46A-9 or
16 any nonprofit corporation engaged in such activity;
- 17 (3) "Utility," a rural water system, gas utility, electric utility, consumer power district,
18 municipal utility, rural electric cooperative, telecommunications company, or any
19 other underground facility.